

# Calendar No. 976

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-974

## CARLETON R. McQUOWN

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JUNE 25, 1970.—Ordered to be printed

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Mr. SCOTT, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany S. Res. 193]

The Committee on the Judiciary, to which was referred the resolution (S. Res. 193) entitled "A Bill for the Relief of Carleton R. McQuown," to the Chief Commissioner of the Court of Claims for a report thereon, having considered the same, reports favorably thereon without amendment and recommends that the resolution be agreed to.

#### PURPOSE

The purpose of this resolution is to refer the bill, S. 1418, entitled "A Bill for the Relief of Carleton R. McQuown," now pending in the Senate, together with all the accompanying papers to the Chief Commissioner of the Court of Claims, to authorize the Chief Commissioner of the Court of Claims to proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States and the amount, if any, legally or equitably due from the United States to the claimant.

Specifically, this resolution would send to the Court of Claims the question of whether the claimant is entitled to certain compensation payments from the United States for his undisputed overtime work while employed as an investigator by the Alcohol and Tobacco Tax Division, Internal Revenue Service, during the period from July 1, 1945, through June 30, 1955.

## STATEMENT

Legislation authorizing Government compensation payment for the extensive overtime work of the claimant was introduced in the 87th, 88th, and 89th Congresses. In the 87th Congress a bill for relief was introduced, reported favorably by the House Judiciary Committee, and placed on the calendar. However, no floor action was taken. In the 88th Congress no action was taken on the bill. In the 89th Congress the bill was introduced again, and postponed in committee, primarily on the ground that no individual bill should be passed to compensate for overtime services until a "comprehensive study" of the matter were made.

Because of the difficulty involved in reintroducing this legislation in the House due to the adverse action in previous Congresses, and especially in view of the recent "study" by the U.S. Court of Claims,<sup>1</sup> a bill with an accompanying resolution referring the case to the Chief Commissioner of the Court of Claims was introduced in the Senate in the 90th Congress so that a report might be compiled on the merits. No action was taken by the Senate.

This bill and resolution are identical to those introduced in the 90th Congress.

The facts of the case as set forth in the 87th Congress by the House Judiciary Committee, which reported the similar bill favorably after an extensive hearing regarding this claim, are as follows:

Mr. Carleton R. McQuown, Mr. Thomas A. Pruett, and Mr. James E. Rowles have appealed to Congress for overtime compensation for services they rendered the Alcohol and Tobacco Tax Division of the Internal Revenue Service. The nature of their work was such that these three employees found it impossible to work set hours or to confine their workday to the normal 8-hour day. These facts were discussed in a hearing held in connection with the bill H.R. 4950 on May 23, 1962. The testimony at that hearing indicated that they were often compelled to keep an illegal distillery under surveillance for hours at a time until the operators of the distillery appeared. It was the understanding of Mr. McQuown, Mr. Pruett, and Mr. Rowles when they assumed their duties with the Alcohol and Tobacco Tax Division that in fact no regular working hours could be maintained and further that they would be subject to call at all hours of the day and night as the situation might require. The men were, therefore, under the impression that they had no choice in the matter but to perform their services without regard to time limitations. In this connection, the following statement was filed with the committee on the day of the subcommittee hearing:

"Re H.R. 4950 (Carlton R. McQuown, Thomas A. Pruett, James E. Rowles).

<sup>1</sup> *Tabutt et al. v. United States*, 121 Ct. Cl. 495 (1952); *Arnvid Anderson et al. v. United States*, 136 Ct. Cl. 365 (1956); *Albright et al. v. United States*, 161 Ct. Cl. 766 (1963); *Adams et al. v. United States*, 162 Ct. Cl. 766 (1963); *Byrnes v. United States*, 163 Ct. Cl. 167 (1963).

*"To Whom It May Concern:*

"I, W. Knox Johnston, former supervisor in charge of the Alcohol and Tobacco Tax Unit, U.S. Treasury, State of Georgia, with headquarters in Atlanta, Ga., having been appointed to the position of supervisor in 1934, and having served in said position until my retirement in 1954, had during this period of time, Carlton R. McQuown, Thomas A. Pruett, and James E. Rowles working under my immediate supervision.

"When they began working in the Alcohol and Tobacco Tax Unit, I instructed them that no regular working hours could be maintained, that they would be subject to call at all hours during the 24-hour day, and when assigned to an investigation, they would be required to complete the investigation regardless of the amount of time involved. All investigators who worked under my supervision were subject to 24-hour call, if necessary.

"When the Congress passed the overtime pay bill in 1945 covering Government employees, there was some question as to how it would apply to the men in our unit. As the particulars were not clear, I instructed the men that they were to continue working as in the past, as the work done by the investigators could not always be completed in a regular 8-hour workday. The men under my supervision were expected to continue their work until the assignment was completed regardless of the hours required.

"My office prepared a weekly statement of the number of hours of overtime worked by each investigator and it was submitted to the district office of the Alcohol and Tobacco Tax Unit.

"Should an investigator have failed to perform his duty as instructed, he would have been subject to reprimand, suspension, dismissal, or some other punitive action.

"This 16th day of February 1962.

"W. KNOX JOHNSTON."

At the hearing on the bill, Mr. McQuown appeared and testified in behalf of his own claim. Mr. McQuown was questioned as to their understanding regarding their entitlement to overtime and whether they made any effort to claim it during the period in which it was performed. Mr. McQuown replied:

"We never did anything because we were told—we were told that our overtime was being reported, and we were told that we would have to work or we would be fired; and we made no effort whatsoever to put ourselves in a position where our jobs would be jeopardized because I was at an age, if I was left out, I couldn't have gotten a job."

Subsequently, the men did submit claims and they were rejected by the Treasury Department.

The report of the Department of the Treasury on the bill opposed relief on the ground that the work performed by these men was "voluntary." This is the position adopted by the Comptroller General in disallowing the claims of Mr. McQuown, Mr. Pruett, and Mr. Rowles.

In view of the facts brought out in the hearing and in the material submitted to the committee, it is recommended that the bill be considered favorably.

The Secretary of the Treasury has consistently opposed enactment of this legislation as is evidenced in its reports in the 87th Congress and the 90th Congress.

The main issue raised in the case seems to be one of interpreting a statute, a question of law or equity. This would indicate that the proper procedure here would be to refer the case to the Chief Commissioner of the U.S. Court of Claims for his interpretation of the statute and its applicability to the particular facts of this case.

Therefore, in view of the question of law involved, the differences of opinion within the three branches of the Government, the resultant discrepancies in compensation awarded for overtime agency work, the equities of the particular situation, and the many recent decisions of the U.S. Court of Claims, this committee feels that, both practically and constitutionally, the case should be referred to the Chief Commissioner of the U.S. Court of Claims for a report on the merits since he would have more expertise on the subject and would be more capable to decide questions raised by this particular case. Accordingly, this committee recommends that the resolution be agreed to.

Attached hereto and made a part hereof are the reports of the Secretary of the Treasury referred to above.

THE GENERAL COUNSEL OF THE TREASURY,  
*Washington, December 14, 1961.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Treasury Department on H.R. 4950, for the relief of Carleton R. McQuown, Thomas A. Pruett, and James E. Rowles.

The proposed legislation would provide for the payment to Carleton R. McQuown of \$7,278.31, to Thomas A. Pruett of \$8,486.17, and to James E. Rowles of \$2,207.67, in full settlement of their claims against the United States for compensation for overtime performed by them while employed as investigators by the Alcohol and Tobacco Tax Division, Internal Revenue Service.

The assistant regional commissioner, alcohol and tobacco tax, Atlanta region, in which the claimants were employed, states that any overtime work performed by these individuals was on a voluntary basis as it was not ordered or approved by anyone having authority to do so. Consequently, the claimants are not entitled to overtime compensation. This view is supported by the Comptroller General who disallowed Mr. McQuown's claim on December 12, 1958, claim No. Z-1582596; Mr. Pruett's claim on October 1, 1958, claim No. Z-1582597; and Mr. Rowles' claim on May 21, 1959, claim No. Z-1969922, because of a finding that the services for which payment was claimed were not officially ordered or approved.



Under the provisions of the Federal Employees Pay Act of 1945 (5 U.S.C. 18), officers and employees are entitled to compensation for all hours of employment officially ordered or approved in excess of 40 hours in any administrative workweek. The President, in implementing the act, issued Executive Order No. 9578 (10 F.R. 8191), which specifies that no work in excess of the 40-hour administrative workweek shall be ordered or approved except in writing by an officer or employee to whom such authority has been specifically delegated by the agency head. This provision is also contained in regulations issued by the Civil Service Commission (5 CFH sec. 25221). The Internal Revenue Manual and predecessor directives state that any work performed in excess of the 40-hour administrative workweek shall not be compensated for unless such work is ordered or approved by one having authority to do so, and that all such work not so ordered or approved is considered to be voluntary. Sanctions are provided to insure that supervisory personnel do not coerce employees into performing "voluntary" overtime services.

Enactment of the proposed legislation would be in derogation of the policy enunciated by the Congress when it enacted the Federal Employees Pay Act of 1954, and would discriminate against the multitude of former and present Government employees who have performed overtime services on a voluntary basis and have not been compensated therefor. It would also overrule judicial decisions as to what constitutes compensable overtime. The Court of Claims, in interpreting the Federal Employees Pay Act of 1945, held in *Tabut et al. v. United States* ((1952) 121 Ct. Cls. 495), that certain alcohol and tobacco tax investigators could not recover for overtime services performed under the same circumstances as those allegedly performed by the beneficiaries of the bill. The court held that since the services performed by the plaintiffs were not ordered or approved by one having authority to do so, the plaintiffs were not entitled to recover.

At the present time, there are pending before the Court of Claims a number of overtime suits in which the Government's case would be jeopardized by the enactment of the proposed legislation. Eighty present or former alcohol and tobacco tax investigators are plaintiffs in pending overtime suits and are seeking a total of \$772,000. Present and former employees of various other agencies are also seeking to recover for overtime services performed under like circumstances. Essentially, the Government's position is that overtime services are not compensable unless officially ordered or approved by one having authority to do so, and reliance is placed upon statutory construction, regulations, and judicial decisions. The enactment of the proposed legislation might be construed as an expression of the sense of the Congress that it is not necessary for overtime services to be officially ordered or approved.

Finally, the enactment of the proposed legislation would result in a flood of bills proposing relief for present and former Government employees who were unsuccessful with their suits in the Court of Claims, or whose claims were disallowed by the Comptroller General, or who have not yet taken any action to seek payment for what they consider to be legitimate claims.

In view of the above, the Treasury Department is opposed to the enactment of the proposed legislation.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

ROBERT H. KNIGHT,  
*General Counsel.*

THE GENERAL COUNSEL OF THE TREASURY,  
*Washington, D.C., September 5, 1968.*

HON. JAMES O. EASTLAND,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for a report setting forth the views of the Treasury Department on S. 3162, "For the relief of Carleton R. McQuown."

The proposed legislation would authorize and direct the payment of \$7,278.31 to Carleton R. McQuown in full satisfaction of all his claims against the United States for compensation for overtime work performed by him while employed as an investigator by the Alcohol and Tobacco Tax Division, Internal Revenue Service, during the period from July 1, 1945, through June 30, 1955.

In 1961, during the course of preparing a report on a bill, H.R. 4950, which would have afforded Mr. McQuown relief identical with that of S. 3162, the Assistant Regional Commissioner, Alcohol and Tobacco Tax, Atlanta region (now Southeast region), stated that any overtime work performed by Mr. McQuown was on a voluntary basis since it was not ordered or approved by anyone having authority to do so. Consequently, it was concluded that Mr. McQuown was not entitled to overtime compensation, a view supported by the Comptroller General who, on December 12, 1958, had disallowed a claim (Z-1582596) for overtime which Mr. McQuown had filed. The Comptroller General based the disallowance on a finding that the services for which payment was claimed were not officially ordered or approved.

The Federal Employees Pay Act of 1945 provided, in part, that officers and employees were entitled to compensation for all hours of employment officially ordered or approved in excess of 40 hours in any administrative workweek. The President, in implementing the act, issued Executive Order No. 9578, 10 F.R. 8191, which specified that no work in excess of the administrative workweek shall be ordered or approved except in writing by an officer or employee to whom such authority had been specifically delegated by the agency head. This provision was also found in the regulations issued by the Civil Service Commission. The Internal Revenue manual also stated that any work performed in excess of the 40-hour administrative workweek would not be compensated for unless the work was ordered or approved by one having authority to do so, and that all such work not so ordered or approved would be considered as voluntary. Provisions similar to these are found in the current law (5 U.S.C., ch. 55) and regulations (5 CFR, ch. 1).

The Court of Claims, in interpreting the Federal Employees Pay Act of 1945, held in *Tabutt, et al. v. United States* (1952), 121 Ct. Cl.

495, that certain alcohol and tobacco tax investigators could not recover for overtime services performed under the same circumstances as those allegedly performed by Mr. McQuown.

In 1964, the Court of Claims found in favor of a number of alcohol and tobacco tax investigators who had filed claims based upon the performance of overtime work. All of the claimants, at the time such work was allegedly rendered, were employed in the regions then identified by the Internal Revenue Service as "San Francisco" and "Omaha." The decision of the Court of Claims was based upon findings that the claimants had worked overtime as a result of "\* \* \* compulsion of both duty and directive," *Byrnes v. United States*. 330 F. 2d 986 (1964). Mr. McQuown was not a party to that lawsuit nor, to our knowledge, has he presented any evidence of the type upon which the Court of Claims based its decision in *Byrnes*, in support of his position. Even if we assume that such evidence is available, the relief contemplated by S. 3162 would not be available to other Government employees similarly situated and such relief, therefore, would be discriminatory.

Accordingly, the Department would not recommend the enactment of S. 3162.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

FRED B. SMITH,  
*General Counsel.*

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